

CONTINENTAL TELEPHONE OF CALIFORNIA

IBLA 78-245

Decided May 1, 1978

Appeal from a decision of California State Land Office, Bureau of Land Management, dismissing protests against charges for a right-of-way. CA 679.

Affirmed.

1. Act of October 21, 1976 – Federal Land Policy and Management Act of 1976:  
Generally – Regulations: Applicability – Rights-of-Way: Generally

Applications for rights-of-way on public lands pending on Oct. 21, 1976, are to be considered as applications under the Federal Land Policy and Management Act of 1976, but, to the extent practical, existing regulations will govern the administration of the public lands until new regulations are issued.

2. Regulations: Applicability – Rights-of-Way: Generally  
Where a regulation requiring reimbursement of certain costs incurred by the United States in the processing of right-of-way applications is promulgated, the cost reimbursement provision is applicable to an application filed prior to and pending on the effective date of the regulation.

APPEARANCES: Mario Manno, Right-of-Way Agent, Continental Telephone of California, for appellant.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Continental Telephone of California has appealed from a decision dated January 26, 1978, of the California State Office, Bureau of

Land Management, which rejected its protests against charges found due in connection with its right-of-way application.

On September 25, 1973, appellant filed an application for a four-fifth mile buried telephone cable right-of-way, pursuant to the Act of March 4, 1911, 36 Stat. 1253. On June 3, 1977, the State Office informed appellant that the right-of-way would be issued if it paid \$20 for the 4-year back period, \$100 for the next 20 years (at \$5 a year), and \$40 for reimbursement of costs. The State Office pointed out that a regulation adopted on April 23, 1975, required that reimbursement costs, as set forth in 43 CFR 2802.1-2, are to be paid in connection with all right-of-way applications pending on June 1, 1975. 43 CFR 2802.1-2(15).

From the dismissal of its protest, appellant has taken this appeal. It contends that a change in the regulation made almost 2 years after it filed its application ought not to affect it. It says there was ample time to have approved its right-of-way prior to the change in the regulation.

[1] As the State Office pointed out, the 1911 Act under which appellant applied was repealed by section 706 of the Federal Land Policy and Management Act of 1976 (FLPMA). 90 Stat. 2743, 2793. Rights-of-way must thereafter be granted pursuant to the provisions of section 501 *et seq.* of that statute, 43 U.S.C.A. § 1761 (Supp. 1977), even if the application was filed earlier. Four States Television, Inc., 32 IBLA 405 (1977). However, in the absence of regulations issued under the 1976 Act, the existing regulations will govern to the extent practical. FLPMA, *supra*, section 301(d), 43 U.S.C. § 1731(d) (Supp. 1977). FLPMA also authorizes the Secretary to collect "reasonable costs" incurred with respect to applications relating to the public lands. FLPMA, *supra*, section 304(b), 43 U.S.C.A. § 1734(b) (Supp. 1977). Accordingly, it was proper to assess reasonable costs, the amount of which appellant does not dispute.

[2] Appellant's contention that it is not bound by a change in regulation adopted after it filed its application is not well taken. A pending application does not create any vested right. Zelph S. Calder, 16 IBLA 27, 81 I.D. 330 (1974). Delay in acting upon a pending application does not increase appellant's rights and its application is subject to the regulations in effect when it is adjudicated. The regulation so provides, 43 CFR 2801.1-2(15), and it is the general rule. *See Barbara A. Joeckel*, 30 IBLA 376 (1977) (regulation increasing rental charge for oil and gas leases applicable to pending applications).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Martin Ritvo  
Administrative Judge

We concur.

Edward W. Stuebing]  
Administrative Judge

Joan B. Thompson  
Administrative Judge.

